APPENDIX A

[Filed August 2, 1995]

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 95-2303
CA-94-447-3

IN RE: AEROQUIP CORPORATION; CHEVRON, U.S.A., PARKER-HANNIFIN CORPORATION; SEQUENTIA, INCORPORATED; AMOCO OIL COMPANY; BASF CORPORATION, ICI AMERICAS, INCORPORATED; ICI ACRYLICS, INCORPORATED; FRIGOSCANDIA FOOD PROCESS SYTEMS, INCORPORATED; STEIN, INCORPORATED; SUPERIOR DOOR COMPANY; DANA CORPORATION; W. W. GRAINGER, INCORPORATED; HONEYWELL, INCORPORATED; CHEMED CORPORATION; OLYMPIC OIL COMPANY; GATES RUBBER COMPANY; EATON CORPORATION; SQUARE D COMPANY; CRANE COMPANY; KEMLITE COMPANY; BRUNSWICK CORPORATION, VAPOR CORPORATION, ECLIPSE INCORPORATED, SOUTHEAST COOLER CORPORATION; WORMALD FIRE SYSTEMS, INCORPORATED; AND MOBIL CORPORATION,

Petitioners

Petitioner has filed a petition for writ of mandamus.

The Court denies the petition.

Entered at the direction of Judge Phillips, with the concurrence of Judge Hall and Judge Michael.

For the Court,

/s/ Bert M. Montague
Clerk

APPENDIX B

[Filed Jun. 26, 1995]

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA ROCKINGHAM DIVISION

No. 3:94CV447

DAVID MACK ALBRIGHT, *et al.*,
Plaintiffs,

v.

AEROQUIP CORPORATION, *et al.*,
Defendants.

MEMORANDUM OPINION

TILLEY, District Judge

This case comes before this Court upon transfer from the United States District Court for the Eastern District of Texas. Plaintiffs seek a remand of this case to Texas state court where it was originally filed. Because a remand is warranted under 28 U.S.C. § 1452(b), Plaintiff's motion to remand is GRANTED. As a result, this case will be remanded to the 60th District Court of Jefferson County, Texas.

I.

On September 3, 1991, a fire occurred at the Imperial Foods Products Plant in Hamlet, North Carolina, killing over twenty-five people and injuring many others. Eventually, as a result of the fire, Imperial Foods ("Imperial") was forced into involuntary bankruptcy. On July 23, 1993, Plaintiffs commenced an action against forty-five defendants in the 60th District Court of Jefferson County,

Texas. Plaintiffs consist of the people who were injured in the fire, the personal representatives of the estates of people who died in the fire, and several spouses or relatives who have filed numerous derivative claims. Defendants are supplier corporations to the Imperial plant which according to the complaint are either incorporated or do business in Texas. Imperial Foods is not now and has never been among the named defendants. Plaintiffs assert numerous state law causes of action grounded in personal injury or wrongful death.

One of the defendants originally named, PNC Bank, N.A. ("PNC") is a creditor of Imperial Foods. Pursuant to 28 U.S.C. § 1452(a),[1] PNC removed the case on August 24, 1993 to the United States Bankruptcy Court for the Eastern District of Texas, asserting that the claims made against it constituted property of the bankrupt Imperial estate. Subsequently, several of the named defendants joined in PNC's removal action.

On September 10, 1993, Plaintiffs filed a motion to remand the case to Texas state court primarily on the ground that there was no federal subject matter jurisdiction. Defendants opposed remand and moved to dismiss or, in the alternative, to transfer the case to this Court. On July 8, 1994, the Texas Bankruptcy Court issued a Report and Recommendation to the United States District Court for the Eastern District of Texas which advised the Texas District Court that the Texas Bankruptcy Court was without subject matter jurisdiction over the matter and that the Texas District Court should withdraw refer-

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[1] 28 U.S.C. § 1452(a) states:

> A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.

ence of the matter and subsequently transfer the case to this Court for proceedings consistent with 28 U.S.C. § 157(b)(5).[2] On August 5, 1994, Judge Cobb of the United States District Court for the Eastern District of Texas adopted the Texas Bankruptcy Court's recommendation and transferred the case to this Court. On September 20, 1994, this Court convened a status conference in Greensboro at which the parties briefly addressed the issue of whether this Court has subject matter jurisdiction under 28 U.S.C. 1334(b). This Court ordered the parties to submit briefs on the issue of subject matter jurisdiction by October 20, 1994. In addition, following the September 20th status conference, the trustee of the Imperial estate fully settled all claims against PNC. Plaintiffs have also released PNC from all claims. These releases contain verdict reduction provisions which operate to eliminate any co-defendant contribution or indemnity rights against PNC. Consequently, on September 28, 1994, this Court entered an order dismissing PNC from the case. On February 7, 1994, this Court sent a letter to all counsel of record indicating that while the Court was not discounting remand under 28 U.S.C. § 1452(a), it believed that remand on equitable grounds might be appropriate under 28 U.S.C. § 1452(b).[3] Because the propriety of remand under 28 U.S.C. § 1452(b) was not discussed at length in either Plaintiffs or Defendants' original briefs, the Court allowed the parties additional time to submit briefs on the issue of remand under 28 U.S.C. § 1452(b). After careful consideration of the briefs and applicable law, this

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[2] 28 U.S.C. § 157(b)(5) states:

> The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.

[3] 28 U.S.C. § 1452(b) states that "[t]he court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground."

Court determines that a remand is appropriate under 28 U.S.C. § 1452(b).

II.

This Court will first address Defendants' argument that Judge Cobb's adoption of the Texas Bankruptcy Court's Report and Recommendation conclusively determined that federal subject matter jurisdiction exists and that his determination is the law of the case. Specifically, Defendants argue that Judge Cobb's transfer order "should not be read in a vacuum, but should be accepted as a disposition of motions extensively briefed and considered." Defendants' Brief on Jurisdiction, Venue, and Due Process at 2. For reasons discussed below, this Court finds that Judge Cobb's order was not the law of the case.

The law of the case doctrine "posits that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case." *See Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 816 (1988) (quoting *Arizona v. California*, 460 U.S. 605, 618 (1983) (dictum)). The law of the case doctrine applies only to issues actually discussed by the previous court and to issues decided by necessary implication. *See Piambino v. Bailey*, 757 F.2d 1112, 1120 (11th Cir. 1985); *Schultz v. Onan Corp.*, 737 F.2d 339, 345 (3rd Cir. 1984). In the present case, on July 8, 1994, Judge Sharp of the United States Bankruptcy Court for the Eastern District of Texas issued a Report and Recommendation to the United States District Court for the Eastern District of Texas, finding that the Bankruptcy Court did not have subject matter jurisdiction over the case under 28 U.S.C. § 157(b)(5). As a result, Judge Sharp recommended that the District Court withdraw reference of this action from the bankruptcy court and subsequently transfer the case to this Court. On August 5, 1994, Judge Cobb of the United States District Court for the Eastern District of Texas adopted the findings of the Report and Recommendation and entered an

order of withdrawal of reference and an order that the case be transferred to this Court pursuant to 28 U.S.C. § 157(b)(5) or alternatively 28 U.S.C. §§ 1404, 1412. Judge Sharp only determined that the Bankruptcy Court did not have subject matter jurisdiction under 28 U.S.C. § 157(b)(5). He made no findings as to whether federal subject matter jurisdiction existed under 28 U.S.C. § 1334(b). As such, Judge Cobb's adoption of Judge Sharp's Report and Recommendation did not address the issue of federal subject matter jurisdiction under 28 U.S.C. § 1334(b). He neither expressly nor impliedly decided the issue federal subject matter jurisdiction under 28 U.S.C. 1334(b). Consequently, the law of the case doctrine does not come into play.

III.

The Court will next consider the issue of federal subject matter jurisdiction under 28 U.S.C. § 1334(b). Plaintiffs contend that with PNC gone as a party, the remaining state law claims are not "related to" the Imperial bankruptcy proceeding and federal subject matter jurisdiction no longer exists.

PNC's notice of removal was filed under 28 U.S.C. § 1452(a) which deals with the removal of claims related to bankruptcy cases. Under Section 1452(a), removal of a claim or cause of action is proper only if the district court for the district where such civil action is pending has jurisdiction under 28 U.S.C. § 1334.[4]

28 U.S.C. § 1452(b) states that "[t]he court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground."

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[4] Section 1334(a) provides that "[e]xcept as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11." Section 1334(b) states that "the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in title 11 or related to cases under title 11."

Courts have listed several factors to be considered in determining whether a remand is appropriate in a particular case under § 1452(b). Such factors include (1) duplication of judicial resources; (2) uneconomical use of judicial resources; (3) effect of remand on the administration of the bankruptcy estate; (4) the relatedness or remoteness of the action to the bankruptcy case; (5) case involves questions of state law better addressed by a state court; (6) comity; (7) prejudice to the involuntarily removed parties; (8) lessened possibility of an inconsistent result; and (9) expertise of the court where the action originated. *See River Cement Co. v. Bangert Bros. Constr. Co.*, 852 F. Supp. 25, 27 (D. Colo. 1994) (citing *In re Finley*, 62 B.R. 361, 366 (Bankr. N.D. Ga. 1986); *see also Textron Inv. Management Co., Inc. v. Struthers Thermo-Flood Corp.*, 169 B.R. 206, 211 (D. Kan. 1994); *Williams v. Shell Oil Co.*, 169 B.R. 684, 692-93 (S.D. Cal. 1994); *In re Videocart, Inc.*, 165 B.R. 740, 744 (D. Mass. 1994); *Intra Muros Trust v. Truck Stop Scale Co.*, 163 B.R. 344, 346 (N.D. Ind. 1994); *Baxter Healthcare Corp. v. Hemex Liquidation Trust*, 132 B.R. 863, 867-68 (N.D. Ill. 1991) (all listing similar factors). In considering these factors, the Court finds that remand would be appropriate in this case.

While the other factors appear to favor neither side on the issue of remand, those numbered above as 3, 4, 6, and 7 (effect of remand on the administration of the bankruptcy estate, relatedness or remoteness of the action to the bankruptcy case, comity and prejudice to the involuntarily removed parties) strongly support a remand. First, the present state law claims are not sufficiently related to the Imperial bankruptcy proceeding. PNC, a creditor of Imperial Foods, removed the case to federal court, asserting that the claims made against it constituted property of the bankrupt Imperial estate. However, since removal, the Trustee of the Imperial estate has fully settled all claims against PNC. In addition, Plaintiffs

have released PNC from all claims. Second, because the present state law claims are unrelated to the Imperial bankruptcy proceeding, the Court finds that a remand to state court would have very little, if any, effect on the administration of the bankruptcy estate. The releases between Plaintiffs and PNC contain verdict reduction provisions which operate to eliminate any co-defendant contribution of indemnity rights against PNC. As a result, a judgment in favor of Plaintiffs against the remaining Defendants would appear to have little, if any, effect on the Imperial estate. Third, because Plaintiffs' choice of a state forum is entitled to substantial deference, Plaintiffs could be prejudiced by a continuation of this action in federal court. *See River Cement,* 852 F. Supp. at 27. Because of these factors, the Court finds that a remand to state court is appropriate under § 1452(b).

This the —— day of June, 1995.

/s/ N. Carlton Tilley, Jr.
United States District Judge

APPENDIX C

[Filed Jun. 26, 1995]

IN THE UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF NORTH CAROLINA
ROCKINGHAM DIVISION

No. 3:94CV447

DAVID MACK ALBRIGHT, *et al.*,
Plaintiffs,

v.

AEROQUIP CORPORATION, *et al.*,
Defendants.

ORDER

For the reasons stated in the memorandum opinion filed contemporaneously herewith, IT IS ORDERED that Plaintiff's motion to remand this action to the 60th District Court of Jefferson County, Texas is GRANTED.

This the —— day of June, 1995.

/s/ N. Carlton Tilley, Jr.
United States District Judge

APPENDIX D

[Filed Jul. 11, 1994]

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

Case No. B-92-12380C-7G
(USBC MDNC Greensboro Div.)

IN RE: IMPERIAL FOOD PRODUCTS, INC.,
a Pennsylvania Corporation
Debtor

Adversary Proceeding No. A-93-1064-S

DAVID MACK ALBRIGHT, *et al.*

VS.

AEROQUIP CORPORATION, *et al.*

REPORT AND RECOMMENDATION
TO DISTRICT COURT

The United States Bankruptcy Court for the Eastern District of Texas (Bankruptcy Court) makes the following report and recommendation pursuant to 28 U.S.C. § 157(c)(1) to be consolidated with the protective notice of removal previously filed in the district court and assigned to the Honorable Howell Cobb, United States District Judge.

The Bankruptcy Court represents that it is without subject matter jurisdiction to entertain the above-styled

and numbered adversary proceeding either in sum or in part. Pursuant to 28 U.S.C. § 157(d) and Fed.R.Bankr. P. 5011 this Court suggests that the honorable district court withdraw reference of this matter for further proceedings. The Bankruptcy Court further recommends that the district court transfer this matter to the district court for the Middle District of North Carolina, Greensboro Division, so that court can make the determination as to where these actions should be tried in accordance with 28 U.S.C. § 157(5). Standing to make the present suggestion is conferred by 11 U.S.C. § 105(a). The following opinion constitutes this Court's proposed findings of facts and conclusions of law in accordance with 28 U.S.C. § 157 (c)(1) and exhibit A hereto constitutes the suggested final judgment for entry by the United States District Court for the Eastern District of Texas.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Background

On September 3, 1991, a fire destroyed the Imperial Food Products Plant (Imperial) in Hamlet, North Carolina. Over twenty-five (25) persons died and numerous others were injured. Subsequently, Imperial was forced into involuntary bankruptcy. Through the bankruptcy process, the claims of the various plaintiffs in this action against Imperial were compromised. Imperial is not a party to the present action.

On July 23, 1993, over one hundred (100) plaintiffs instituted an action against forty-five (45) defendants in the 60th Judicial District Court of Jefferson County, Texas (the action). The action was assigned case no. B-146,864. Generally, the plaintiffs represent individuals who are or were employees of Imperial; survivors of employees of Imperial; or relatives of employees of Imperial who were working in the particular Imperial facility

destroyed by the fire. Plaintiffs' assert various causes of action grounded in personal injury or wrongful death. The defendants represent parties which provided various equipment, materials, and/or services to the affected facility. Plaintiffs allege that defendants' provision of equipment, material, and/or services is directly or proximately responsible for plaintiffs' damages.

Pursuant to 28 U.S.C. § 1452(a) and Fed.R.Bankr.P. 9027 one of the named defendants, PNC Bank, N.A. (PNC), removed the action to this Court. PNC asserts that the claims made against it by plaintiffs constitute property of the Imperial bankruptcy estate in accordance with 28 U.S.C. §§ 157, 1334 and 11 U.S.C. § 723. Almost all of the named defendants have subsequently joined in PNC's removal action.

The removal has unleashed a flurry of motions. In the case of plaintiffs, the tenor of these motions request either that this Court remand (28 U.S.C. § 1452(b)) or abstain (28 U.S.C. § 1334(c)) from hearing this case on the grounds of 1) lack of bankruptcy court jurisdiction, and 2) comity with state court process. *See* Plaintiffs' Motion to Remand, filed September 10, 1993. Defendants, on the other hand, urge this Court to either dismiss this action for lack of personal jurisdiction (Fed. R.Civ.P. 12(b)(2)) or, on the ground of *forum non conveniens*, to transfer this case to the appropriate United States District Court in North Carolina. *See* Defendants' Motion to Dismiss for Lack of Personal Jurisdiction or, in the Alternative, to Transfer to North Carolina, filed August 24, 1993.

The Bankruptcy Court does not have subject matter jurisdiction over this case

Despite the initial impression that insufficient contacts justify retaining this case for adjudication in a Texas forum this Court concludes that not only does it lack

subject matter jurisdiction to hear this case but it correspondingly lacks subject matter jurisdiction to effect a transfer of this action to North Carolina.

Bankruptcy courts are courts of limited jurisdiction, the parameters of which are determined by reference to 28 U.S.C. §§ 157, 1334. Although defendants, through a multitude of pleadings and briefs, have argued various theories asserting bankruptcy court subject matter jurisdiction over this action on the basis that it 'arises in,' 'arises under,' or is 'related to' a case under title 11, all such arguments are unavailing. This conclusion is mandated by the clear and inescapable language of 28 U.S.C. § 157(b)(5) which provides:

> The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.

Whatever characterization is given to this action by defendants this litigation involves nothing more than resolution and liquidation of personal injury and wrongful death claims. Such litigation is solely within the province of the district court. *Baumgart v. Fairchild Aircraft Corp.*, 981 F.2d 824, 831 n.7 (5th Cir. 1993) ("Personal injury and wrongful death actions are "non-core" proceedings and thus cannot be heard by a bankruptcy court.").

Neither is this Court empowered to dismiss this action for lack of personal jurisdiction over certain party defendants and/or to transfer venue of this case to the appropriate forum in North Carolina. *See* 28 U.S.C. § 1412. Subject matter jurisdiction is an absolute principle—either the court has it or it does not—there are no half measures. Therefore, if a bankruptcy court is

without subject matter jurisdiction to try a personal injury case it is additionally without subject matter jurisdiction to exercise ancillary control over procedural or preliminary matters associated with the case. *Matter of Barker-Fowler Elec. Co.*, 141 B.R. 929, 939 (Bankr. W.D.Mich. 1992) ("Whether [Creditor's] actions under state law to preserve [a] personal injury suit actually tolled the statute of limitations is an issue this court is not authorized, nor does it desire, to resolve."); *In re U.S. Lines, Inc.*, 128 B.R. 339, 341 (S.D.N.Y. 1991) ("[Section 157(b)(5)] is meant to designate which court, as between the bankruptcy court and the district court, should hear personal injury claims against the debtor, and secondarily, to identify which court should determine the venue for such claims."); *In re Smith*, 95 B.R. 286, 291 (Bankr.N.D.N.Y. 1988) ("[Personal injury actions] and any motions relative to their trial, must be addressed to and heard in the district court."); *In re Waterman S.S. Corp.*, 63 B.R. 435, 437 (Bankr.S.D.N.Y. 1986) (Concluding that the district court is the proper forum for determining a motion to transfer venue of a personal injury case.); *In re Johns-Manville Corp.*, 45 B.R. 827, 829 (D.S.D.N.Y. 1984); *In re UNR Industries, Inc.*, 45 B.R. 322, 325 (D.N.D.Ill. 1984).

The reference of this action should be withdrawn by the district court

This Court is of the opinion that it has two remaining options with respect to the disposition of this case. The first is dismissal without prejudice pursuant to Fed.R. Bankr.P. 7012(b)(1). The Court declines to exercise this option. The Court observes that this action has already been removed from state court to the federal system. Dozens of pleadings and several extensively researched briefs addressing the issue of venue have been prepared and filed by the various parties. Given the likelihood that upon any dismissal defendants would imme-

diately remove this action directly to the district court (defendants' previous Protective Notice of Removal, filed in the district court may have already accomplished this result) this option would appear to serve little purpose except to drive up attorneys' fees.

The second option, the present suggestion of withdrawal of reference, is clearly the preferred option. The district court is, pursuant to 28 U.S.C. § 157(b)(5), vested with subject matter jurisdiction over this action. It is further this Court's opinion that the last clause of 28 U.S.C. § 157(b)(5) authorizes the district court in which the bankruptcy case is pending to determine whether the personal injury, tort and wrongful death claims shall be tried in that district or in the district court in the district where the claim arose. It is this provision of the law that prompts this Court to recommend that upon withdrawal of the reference from this Court the matter be transferred to the district court of the Middle District of North Carolina, Greensboro Division, for a determination by that district court as to where these matters shall be heard. Conversely, should the district court find a procedural or jurisdictional defect in the proceeding it is empowered to take dispositive action. Withdrawal of the reference also serves the principle of economy in avoiding the previously discussed costs attendant to a dismissal. For the foregoing reasons, this Court recommends that the honorable district court withdraw reference of this action from the bankruptcy court and then transfer the action to the Middle District of North Carolina, Greensboro Division.

SIGNED on this the 8th day of July, 1994.

/s/ Donald R. Sharp
DONALD R. SHARP
United States Bankruptcy Judge

APPENDIX E

[Filed Aug. 5, 1994]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

Case No. B-92-12380C-2G
(USBC MDNC Greensboro Div.)

IN RE: IMPERIAL FOOD PRODUCTS, INC.
a Pennsylvania Corporation,
Debtor

Adversary Proceeding No. A-93-1064-S

DAVID MACK ALBRIGHT, *et al.*

VS.

AEROQUIP CORPORATION, *et al.*

ORDER OF WITHDRAWAL OF REFERENCE

The Report and Recommendation from the Bankruptcy Court of the Eastern District of Texas recommending withdrawal of reference and transfer of certain actions to the Middle District of North Carolina, Greensboro Division, came before the Court for consideration. After due consideration of the Report and Recommendation of the Bankruptcy court, this Court enters the following order:

It is ORDERED, ADJUDGED, and DECREED that the Report and Recommendation of the Bankruptcy Court

is hereby approved and the proposed findings of fact and conclusions of law are hereby adopted and all of the proceedings in the captioned matter are ordered withdrawn from the Bankruptcy Court of the Eastern District of Texas to the United States District Court for the Eastern District of Texas.

It is further ORDERED, ADJUDGED, and DECREED that upon withdrawal of this case from the Bankruptcy Court of the Eastern District of Texas, all matters withdrawn will be transferred to the United States District Court for the Middle District of North Carolina, Greensboro Division for further proceedings.

SIGNED August 5, 1994.

/s/ Howell Cobb
HOWELL COBB
United States District Judge

APPENDIX F

[Filed Aug. 5, 1994]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

No. 1:93-CV-425

(Consolidated with Adversary Proceeding
No. A-93-1064-S)

DAVID MACK ALBRIGHT, *et al.*

VS.

AEROQUIP CORPORATION, *et al.*

ORDER OF TRANSFER

The Court, having adopted the Report and Recommendation of the Bankruptcy Court for the Eastern District of Texas, is of the opinion that this case should be transferred to the Middle District of North Carolina, Greensboro Division.

28 U.S.C. § 157(5) provides: "The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in which the claim arose, as determined by the district court in which the bankruptcy case is pending." Because the bankruptcy case was filed in the Middle District of North Carolina, that court should determine where the claim should be

tried. Consequently, this case should be transferred to the Middle District for that determination.

Alternatively, transfer is appropriate under 28 U.S.C. §§ 1404, 1412.[1] All operative facts took place in North Carolina. Consequently, most, if not all, parties, witnesses, and evidence are located in North Carolina. Furthermore, the bankruptcy case was filed in the Middle District of North Carolina. Finally, the only apparent connection between the case and the Eastern District of Texas is the residence of one of the plaintiffs' attorneys.

For these reasons, and for the reasons stated in the Bankruptcy Court's Report and Recommendation, the court finds that the interests of justice require the transfer of this case to the District where it belongs.

It is HEREBY ORDERED, ADJUDGED, and DECREED that the above numbered and styled consolidated case is HEREBY TRANSFERRED to the Middle District of North Carolina, Greensboro Division.

SIGNED August 5, 1994.

/s/ Howell Cobb
HOWELL COBB
United States District Judge

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[1] Because transfer to the Middle District of North Carolina is appropriate under either 28 U.S.C. § 157(b)(5) or 28 U.S.C. §§ 1404(a) and 1412, the court need not decide which provision would control in the event that the provisions produced conflicting results.

APPENDIX G

[Filed September 12, 1995]

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 95-2303
CA-94-447-3

IN RE: AEROQUIP CORPORATION; CHEVRON, U.S.A.; PARKER-HANNIFIN CORPORATION; SEQUENTIA, INCORPORATED; AMOCO OIL COMPANY; BASF CORPORATION; ICI AMERICAS, INCORPORATED; ICI ACRYLICS, INCORPORATED; FRIGOSCANDIA FOOD PROCESS SYSTEMS, INCORPORATED; STEIN, INCORPORATED; SUPERIOR DOOR COMPANY; DANA CORPORATION; W. W. GRAINGER, INCORPORATED; HONEYWELL, INCORPORATED; CHEMED CORPORATION; OLYMPIC OIL COMPANY; GATES RUBBER COMPANY; EATON CORPORATION; SQUARE D COMPANY; CRANE COMPANY; KEMLITE COMPANY; BRUNSWICK CORPORATION; VAPOR CORPORATION; ECLIPSE, INCORPORATED; SOUTHEAST COOLER CORPORATION; WORMALD FIRE SYSTEMS, INCORPORATED; and MOBIL OIL CORPORATION,

Petitioners

ON PETITION FOR REHEARING WITH SUGGESTION FOR REHEARING IN BANC

Petitioners filed a petition for rehearing with suggestion for rehearing in banc.

Judges Phillips, Hall, and Michael voted to deny the petition for rehearing.

A member of the Court requested a poll on the suggestion for rehearing in banc, and a majority of the judges voted to deny rehearing in banc. Judges Russell and Widener voted to rehear the case in banc, and Judges Hall, Murnaghan, Wilkinson, Niemeyer, Luttig, and Michael voted against rehearing in banc.

Judges Ervin, Wilkins, Hamilton, Williams, and Motz were disqualified and did not participate in the poll.

The Court denies the petition for rehearing with suggestion for rehearing in banc.

Entered at the direction of Judge Phillips for the Court.

For the Court,

/s/ Bert M. Montague
Clerk

APPENDIX H

CAPTION OF CASE ON ORIGINAL COMPLAINT

The following is the caption of the case appearing on the Complaint initially filed in the District Court of Jefferson County, Texas, 60th Judicial District, Docket No. B-146,864, on July 23, 1993, reflecting the names of the persons and companies who initially were parties to the lawsuit. (Several of the defendants have since been dismissed.)

IN THE DISTRICT COURT
OF JEFFERSON COUNTY, TEXAS
60TH JUDICIAL DISTRICT

No. B-146,864

PLAINTIFFS:

David Mack Albright, Individually and as Administrator of Estate of David Michael Albright, Deceased; Betty H. Albright; Alforence Anderson, Individually and as Administrator of the Estate of Peggy Jean Anderson, Deceased; Gillis Sloan, Jr.; Robert T. Fairley; Maurice E. Fairley; Alfonzo Fairley, Jr.; Scottie Bethea; Vernon McRae; Steve W. McRae; Sammy L. McRae; Brenda Bailey, Flora Cole Banks, Individually and as Administratrix of the Estate of Margaret Teresa Banks, Deceased; James Herbert Banks; Michael Terrell Banks and Markita J. McCollum, Minor, by and through Flora Cole Banks as Next Friend; James Banks; Fred Ernest Ester Barrington, Sr., Individually and as Co-Administrator of the Estate of Fred Ernest Ester Barrington, Jr., Deceased; Nelson Barrington, Individually and as Co-Administrator of the Estate of Fred Ernest Ester Barrington, Jr., Deceased; Linda P. Owens, Individually and as Co-Administrator of the Estate of Fred Ernest Ester Barrington, Jr., Deceased; Crystal Bar-

rington, Minor, by and through Linda Owens as Next Friend; Fred Ernest Ester Barrington, Sr., Individually and as Co-Administrator of the Estate of Josephine Barrington, Deceased; Nelson Barrington, Individually and as Co-Administrator of the Estate of Josephine Barrington, Deceased; Nelson Barrington; Virginia Barrington Jeffery; Peggy Barrington; Linda Barrington; Larry Bellamy, Individually and as Administrator of the Estate of Elizabeth Ann Bellamy, Deceased; Bernetta Odom; Sherman Pouncy, Minor, by and through Larry Bellamy as Next Friend; Romilla Pouncy; Ella Mae Blackstock; Ada Blanchard; Doris Bostic; Dannie Bostic; Donna Branch (now Donna Davis); Evelyn Broady (now Evelyn Wall); Mary Bryant; Ruby Bullard; Nora Bush; Tommie E. Bush; Velma Watts Butler; Elton Ray Cafferata; Bernard Campbell; Joanne Page, Individually and as Administratrix of the Estate of Gail Vivian Campbell, Deceased; Chonna Campbell, Antonio Liles, Minor, by and through Joanne Page as Next Friend; Brenda Chambers, Individually and as Administratrix of the Estate of Rosie Ann Chambers, Deceased; Grimshaw Chambers; Rose Chappell (now Rose Yow); Thomas Coble; Raya Coble; Pamela S. Cooper; Angela Lynn Coulter, Individually and as Administratrix of the Estate of Josie Mae Coulter, Deceased; Rodney Dale Coulter; Betty Jo Coulter; Lillie Bell Davis; John Davis; Johnny Dawkins; Crystal Dawkins; Catherine L. Dawkins, Individually and as Administratrix of the Estate of Phillip Ray Dawkins, Sr.,Deceased; Phillip Ray Dawkins, Jr.; Noel Dawkins Smith; Amy Dawkins; Minor, by and through Catherine L. Dawkins as Next Friend; Linda Ellison; Mattie Fairley; Maurice Fairley; Roy Leon Funderburk; Pearlie Gagnon, Individually and as Administratrix of the Estate of John Robert Gagnon, Sr., Deceased; John Robert Gagnon, Jr.; Michael Gagnon; Scott Gagnon; Minor, by and through

Pearlie Gagnon as Next Friend; Gerard Gagnon, Sr.; Loretta Goodwin; Cynthia Graham; Allison Griffin; Elaine Griffin; Albert Griffin; Marie Hamilton; Patricia W. Hatcher; Felton Albert Hatcher; Bernita Ingram; Rachel Ingram; Homer Jarrell, Individually and as Administrator of the Estate of Bertha Jarrell, Deceased; Otis Jarrell; Kenneth Jarrell; William Jack Kelly, Jr., Individually and as Administrator of the Estate of Brenda Gail Kelly, Deceased; Barbara Elaine Voncannon Kelly; Richard M. Lipford; Susan S. Lipford; Annie Locklear; Evander Lynch, Individually and as Administrator of the Estate of Janice Lynch, Deceased; David Lynch; Christy Lynch; Ina Wall; Sherman McDonald; Brenda McDougald, Monica McDougald; Sandra McPhaul; Alberta McRae; Calvin McRae; Gloria Malachi; Kim Mangus; Sylvia Martin; Von Martin, Minor, by and through Sylvia Martin as Next Friend; Mildred Lassiter Moates; Olin Dellano Moates; Pamela Moore; Margie Morrison, Individually and as Administratrix of the Estate of Michael Morrison, Deceased; Priscilla Murphy; Sally Murphy; Calvin Murphy; Katie Nicholson; Gladys Faye Nolan; Ronnie Carroll Nolan; Thomas Oates; Delores F. Oates; Bernetta (Felecia) Odom; William E. Peele, Individually and as Co-Administrator of the Estate of Rose Marie Peele, Deceased; Carrie M. Gallops, Individually and as Co-Administratrix of the Estate of Rose Marie Peele, Deceased; Amanda Clark; James Peele; Pamela Collins; Hilda Gibson; Annette Pierce; Deborah Pittman; Ronald Wayne Pool; Delores Pouncy; Mary Ann Darien Primas; John Sloan; Bobby Quick; Kay Quick; Delores Quick; Hallie Quick, Jr.; Georgia Ann Quick; Peggy Brown, Individually and as Administratrix of the Estate of Mary Alice Quick, Deceased; Martin Quick; Laronda Arnold; Nakisha Quick and Terrell Quick, Minors, by and through Peggy Brown as Next Friend; Anne S. Arnold; Willie Quick; Caro-

lyn Rainwater; Lula Mae Smith, Individually and as Administratrix of the Estate of Cynthia Ratliff, Deceased; Martha Nelson, Individually and as Administratrix of the Estate of Martha Ratliff, Deceased; Eugene Nelson; Thurman Nelson and Elaine Nelson, Minors, by and through Martha Nelson as Next Friend; Cleo Reddick; Johnny Reddick; Mary Sue Rich, Individually and as Administratrix of the Estate of Donald Bruce Rich, Jr., Deceased; Cody Allen Rich, Minor, by and through Mary Sue Rich as Next Friend; Richard Roberts; Joy Roberts; Zelda Roberts; John M. Sanders; Barbara Shaw; Jeannette Smith; Reggie Smith; William Smith; William Winston Smith, Jr.; William Noconda Smith, Sr.; Janet Stone; Audrey Sue Teal (now Audrey Sue Scott); Letha Terry; Henry Terry; James Everett Broady, Individually and as Administrator of the Estate of Minnie Mae Thompson, Deceased; James Everett Broady; Teresa Ann Ellerbe; Thomas Ellerbe; James Thompson; Carritha Broady; Sharon Townsend; Betty Eubanks, Individually and as Administratrix of the Estate of Cynthia Wall, Deceased; Charles A. Gainey, III; Clayton Fuller Gainey; Tracy Nicole Chavis, Minor, by and through Betty Eubanks as Next Friend; Jerry Wall; Paul Saunders, Individually and as Administrator of the Estate of Mary Lillian Wall, Deceased; Ella Harrington; Mary Washington; Martha Waters; Weldon Waters; Alice Suggs Webb, Individually and Administratrix of the Estate of Jeffrey Antonio Webb, Deceased; James Prescott Webb; Shawnta Fairley, Minor, by and through Aquanetta Fairley as Next Friend; Betty White; Kenneth White; Darrell Leonard Wilkins, Individually and as Administrator of the Estate of Rose Lynette Jacobs Wilkins, Deceased; Mildred English Jacobs; Conester Williams; Sarah Williams

DEFENDANTS:

Aeroquip Corporation; Amoco Oil Company; BASF Corporation, d/b/a Delaware Mew Corporation and f/k/a Inmont f/k/a BASF Wyandotte Corporation; Chemed Corporation; Chevron U.S.A., Inc.; Commercial & Architectural Products, Inc., d/b/a Marlite, and Marlite; Crane Company, and Unidynamics Corporation, a Subdivision of Crane Company, and Dyrotech Industries, a Subdivision of Unidynamics Company, which includes Kemlite, a Division of Dyrotech Industries; Dana Corporation, which includes Dana, d/b/a Coll-O-Crimp (Weatherhead), a Division of Dana Corporation; DuBois Chemicals, a Division of Chemed Corporation; Eaton Corporation, which includes Eaton Fluid Power Products and Eaton Hydraulics; Echlin Sales Company, which includes Continental Hydraulic Hose, a Division of Echlin Sales Company; Eclipse Incorporated, which includes Eclipse Combustion Division, A Division of Eclipse Incorporated; Frigoscandia Food Process Systems, Inc., and Stein, Inc., and Stein Associates, Inc.; The Gates Rubber Company; Gress Foods Incorporated, which includes Gress Poultry and Gress Refrigeration, and Whitworth Farms; Heberger Corp.; Honeywell, Inc.; ICI Americas, f/k/a ICI Chemical Industries, ICI Acrylics, f/k/a KSH, Inc., a Subdivision of ICI Chemical Industries, which includes K-Lite and K-Lux, Divisions of ICI Acrylics, and K-Lite; JSJ Corporation, d/b/a Sparks Belting Company; Lectronic Systems, Inc.; Lichtman Industrial Supply, Inc.; Liquid Carbonic Carbon Dioxide Corporation; Lubrication Engineers, Inc.; McGill Manufacturing Co., Inc.; Mobil Oil Corporation; Motion Industries; North American Manufacturing, Inc.; North Carolina Foam Industries; North Carolina Natural Gas Corporation; Olympic Oil Company; Parker-Hannifin Corporation; PNC Bank, North-East Pennsylvania, f/k/a Northeastern Bank of Pennsyl-

vania; Sequentia, Inc.; Smith and Chester, Inc., f/k/a W. H. Nichols & Company, Inc., which includes HPI Nichols, a W. H. Nichols & Company, Inc., Company; Southeast Cooler; Square D Company; Superior Door Co.; Texaco, Inc.; Vapor Corporation; Brunswick Corporation, a Division of Vapor Corporation, which includes Raymond Control Systems, a Brunswick Corporation; Wormald Fire Systems, Inc., which includes Wormald Fire Systems, Inc., successor to Ansul Fire Suppression Systems; W. W. Grainger, which includes Grainger, a Division of W. W. Grainger, Inc.; and Ziegler Fire Extinguisher Service, Inc.